

(b) By July 31, 2011 and July 31 of each year thereafter, the Administrator will determine by order the CAIR NO<sub>x</sub> Ozone Season allowance allocations, in accordance with § 97.342(a) and (b), for the control period in the fourth year after the year of the applicable deadline for determination under this paragraph.

(c) By April 30, 2009 and April 30 of each year thereafter, the Administrator will determine by order the CAIR NO<sub>x</sub> Ozone Season allowance allocations, in accordance with § 97.342(a), (c), and (d), for the control period in the year of the applicable deadline for determination under this paragraph.

(d) The Administrator will make available to the public each determination of CAIR NO<sub>x</sub> Ozone Season allowances under paragraph (a), (b), or (c) of this section and will provide an opportunity for submission of objections to the determination. Objections shall be limited to addressing whether the determination is in accordance with § 97.342. Based on any such objections, the Administrator will adjust each determination to the extent necessary to ensure that it is in accordance with § 97.342.

**§ 97.342 CAIR NO<sub>x</sub> Ozone Season allowance allocations.**

(a)(1) The baseline heat input (in mmBtu) used with respect to CAIR NO<sub>x</sub> Ozone Season allowance allocations under paragraph (b) of this section for each CAIR NO<sub>x</sub> Ozone Season unit will be:

(i) For units commencing operation before January 1, 2001 the average of the 3 highest amounts of the unit's adjusted control period heat input for 2000 through 2004, with the adjusted control period heat input for each year calculated as follows:

(A) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 100 percent;

(B) If the unit is oil-fired during the year, the unit's control period heat input for such year is multiplied by 60 percent; and

(C) If the unit is not subject to paragraph (a)(1)(i)(A) or (B) of this section,

the unit's control period heat input for such year is multiplied by 40 percent.

(ii) For units commencing operation on or after January 1, 2001 and operating each calendar year during a period of 5 or more consecutive calendar years, the average of the 3 highest amounts of the unit's total converted control period heat input over the first such 5 years.

(2)(i) A unit's control period heat input, and a unit's status as coal-fired or oil-fired, for a calendar year under paragraph (a)(1)(i) of this section, and a unit's total tons of NO<sub>x</sub> emissions during a control period in a calendar year under paragraph (c)(3) of this section, will be determined in accordance with part 75 of this chapter, to the extent the unit was otherwise subject to the requirements of part 75 of this chapter for the year, or will be based on the best available data reported to the Administrator for the unit (in a format prescribed by the Administrator), to the extent the unit was not otherwise subject to the requirements of part 75 of this chapter for the year.

(ii) A unit's converted control period heat input for a calendar year specified under paragraph (a)(1)(ii) of this section equals:

(A) Except as provided in paragraph (a)(2)(ii)(B) or (C) of this section, the control period gross electrical output of the generator or generators served by the unit multiplied by 7,900 Btu/kWh, if the unit is coal-fired for the year, or 6,675 Btu/kWh, if the unit is not coal-fired for the year, and divided by 1,000,000 Btu/mmBtu, provided that if a generator is served by 2 or more units, then the gross electrical output of the generator will be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the year;

(B) For a unit that is a boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the total heat energy (in Btu) of the steam produced by the boiler during the control period, divided by 0.8 and by 1,000,000 Btu/mmBtu; or

(C) For a unit that is a combustion turbine and has equipment used to produce electricity and useful thermal

energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the control period gross electrical output of the enclosed device comprising the compressor, combustor, and turbine multiplied by 3,413 Btu/kWh, plus the total heat energy (in Btu) of the steam produced by any associated heat recovery steam generator during the control period divided by 0.8, and with the sum divided by 1,000,000 Btu/mmBtu.

(iii) Gross electrical output and total heat energy under paragraph (a)(2)(ii) of this section will be determined based on the best available data reported to the Administrator for the unit (in a format prescribed by the Administrator).

(3) The Administrator will determine what data are the best available data under paragraph (a)(2) of this section by weighing the likelihood that data are accurate and reliable and giving greater weight to data submitted to a governmental entity in compliance with legal requirements or substantiated by an independent entity.

(b)(1) For each control period in 2009 and thereafter, the Administrator will allocate to all CAIR NO<sub>x</sub> Ozone Season units in a State that have a baseline heat input (as determined under paragraph (a) of this section) a total amount of CAIR NO<sub>x</sub> Ozone Season allowances equal to 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the tons of NO<sub>x</sub> emissions in the applicable State trading budget under § 97.340 (except as provided in paragraphs (d) and (e) of this section).

(2) The Administrator will allocate CAIR NO<sub>x</sub> Ozone Season allowances to each CAIR NO<sub>x</sub> Ozone Season unit under paragraph (b)(1) of this section in an amount determined by multiplying the total amount of CAIR NO<sub>x</sub> Ozone Season allowances allocated under paragraph (b)(1) of this section by the ratio of the baseline heat input of such CAIR NO<sub>x</sub> Ozone Season unit to the total amount of baseline heat input of all such CAIR NO<sub>x</sub> Ozone Season units in the State and rounding to the nearest whole allowance as appropriate.

(c) For each control period in 2009 and thereafter, the Administrator will

allocate CAIR NO<sub>x</sub> Ozone Season allowances to CAIR NO<sub>x</sub> Ozone Season units in a State that are not allocated CAIR NO<sub>x</sub> Ozone Season allowances under paragraph (b) of this section because the units do not yet have a baseline heat input under paragraph (a) of this section or because the units have a baseline heat input but all CAIR NO<sub>x</sub> Ozone Season allowances available under paragraph (b) of this section for the control period are already allocated, in accordance with the following procedures:

(1) The Administrator will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated CAIR NO<sub>x</sub> Ozone Season allowances equal to 5 percent for a control period in 2009 through 2014, and 3 percent for a control period in 2015 and thereafter, of the amount of tons of NO<sub>x</sub> emissions in the applicable State trading budget under § 97.340.

(2) The CAIR designated representative of such a CAIR NO<sub>x</sub> Ozone Season unit may submit to the Administrator a request, in a format specified by the Administrator, to be allocated CAIR NO<sub>x</sub> Ozone Season allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO<sub>x</sub> Ozone Season unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO<sub>x</sub> Ozone Season allowances under paragraph (b) of this section. A separate CAIR NO<sub>x</sub> Ozone Season allowance allocation request for each control period for which CAIR NO<sub>x</sub> Ozone Season allowances are sought must be submitted on or before February 1 before such control period and after the date on which the CAIR NO<sub>x</sub> Ozone Season unit commences commercial operation.

(3) In a CAIR NO<sub>x</sub> Ozone Season allowance allocation request under paragraph (c)(2) of this section, the CAIR designated representative may request for a control period CAIR NO<sub>x</sub> Ozone Season allowances in an amount not exceeding the CAIR NO<sub>x</sub> Ozone Season unit(s) total tons of NO<sub>x</sub> emissions during the control period immediately before such control period.

(4) The Administrator will review each CAIR NO<sub>x</sub> Ozone Season allowance allocation request under paragraph (c)(2) of this section and will allocate CAIR NO<sub>x</sub> Ozone Season allowances for each control period pursuant to such request as follows:

(i) The Administrator will accept an allowance allocation request only if the request meets, or is adjusted by the Administrator as necessary to meet, the requirements of paragraphs (c)(2) and (3) of this section.

(ii) On or after February 1 before the control period, the Administrator will determine the sum of the CAIR NO<sub>x</sub> Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section) in all allowance allocation requests accepted under paragraph (c)(4)(i) of this section for the control period.

(iii) If the amount of CAIR NO<sub>x</sub> Ozone Season allowances in the new unit set-aside for the control period is greater than or equal to the sum under paragraph (c)(4)(ii) of this section, then the Administrator will allocate the amount of CAIR NO<sub>x</sub> Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section) to each CAIR NO<sub>x</sub> Ozone Season unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section.

(iv) If the amount of CAIR NO<sub>x</sub> Ozone Season allowances in the new unit set-aside for the control period is less than the sum under paragraph (c)(4)(ii) of this section, then the Administrator will allocate to each CAIR NO<sub>x</sub> Ozone Season unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section the amount of the CAIR NO<sub>x</sub> Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section), multiplied by the amount of CAIR NO<sub>x</sub> Ozone Season allowances in the new unit set-aside for the control period, divided by the sum determined under paragraph (c)(4)(ii) of this section, and rounded to the nearest whole allowance as appropriate.

(v) The Administrator will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO<sub>x</sub> Ozone Season allowances (if any) allo-

cated for the control period to the CAIR NO<sub>x</sub> Ozone Season unit covered by the request.

(d) If, after completion of the procedures under paragraph (c)(4) of this section for a control period, any unallocated CAIR NO<sub>x</sub> Ozone Season allowances remain in the new unit set-aside under paragraph (c) of this section for a State for the control period, the Administrator will allocate to each CAIR NO<sub>x</sub> Ozone Season unit that was allocated CAIR NO<sub>x</sub> Ozone Season allowances under paragraph (b) of this section in the State an amount of CAIR NO<sub>x</sub> Ozone Season allowances equal to the total amount of such remaining unallocated CAIR NO<sub>x</sub> Ozone Season allowances, multiplied by the unit's allocation under paragraph (b) of this section, divided by 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the amount of tons of NO<sub>x</sub> emissions in the applicable State trading budget under § 97.340, and rounded to the nearest whole allowance as appropriate.

(e) If the Administrator determines that CAIR NO<sub>x</sub> Ozone Season allowances were allocated under paragraphs (a) and (b) of this section, paragraphs (a) and (c) of this section, or paragraph (d) of this section for a control period and that the recipient of the allocation is not actually a CAIR NO<sub>x</sub> Ozone Season unit under § 97.304 in such control period, then the Administrator will notify the CAIR designated representative and will act in accordance with the following procedures:

(1) Except as provided in paragraph (e)(2) or (3) of this section, the Administrator will not record such CAIR NO<sub>x</sub> Ozone Season allowances under § 97.353.

(2) If the Administrator already recorded such CAIR NO<sub>x</sub> Ozone Season allowances under § 97.353 and if the Administrator makes such determinations before making deductions for the source that includes such recipient under § 97.354(b) for the control period, then the Administrator will deduct from the account in which such CAIR NO<sub>x</sub> Ozone Season allowances were recorded under § 97.353 an amount of CAIR NO<sub>x</sub> Ozone Season allowances allocated for the same or a prior control

period equal to the amount of such already recorded CAIR NO<sub>x</sub> Ozone Season allowances. The CAIR designated representative shall ensure that there are sufficient CAIR NO<sub>x</sub> Ozone Season allowances in such account for completion of the deduction.

(3) If the Administrator already recorded such CAIR NO<sub>x</sub> Ozone Season allowances under § 97.353 and if the Administrator makes such determinations after making deductions for the source that includes such recipient under § 97.354(b) for the control period, then the Administrator will apply paragraph (e)(1) or (2) of this section, as appropriate, to any subsequent control period for which CAIR NO<sub>x</sub> Ozone Season allowances were allocated to such recipient.

(4) The Administrator will transfer the CAIR NO<sub>x</sub> Ozone Season allowances that are not recorded, or that are deducted, in accordance with paragraphs (e)(1), (2), and (3) of this section to a new unit set-aside for the State in which such recipient is located.

**§ 97.343 Alternative of allocation of CAIR NO<sub>x</sub> Ozone Season allowances by permitting authority.**

(a) Notwithstanding §§ 97.341, 97.342, and 97.353 if a State submits, and the Administrator approves, a State implementation plan revision in accordance with § 51.123(ee)(2) of this chapter providing for allocation of CAIR NO<sub>x</sub> Ozone Season allowances by the permitting authority, then the permitting authority shall make such allocations in accordance with such approved State implementation plan revision, the Administrator will not make allocations under §§ 97.341 and 97.342 for the CAIR NO<sub>x</sub> Ozone Season units in the State, and under § 97.353, the Administrator will record allocations made under such approved State implementation plan revision instead of allocations under §§ 97.341 and 97.342.

(b) In implementing paragraph (a) of this section and §§ 97.341, 97.342, and 97.353, the Administrator will ensure that the total amount of CAIR NO<sub>x</sub> Ozone Season allowances allocated, under such provisions and under a State's State implementation plan revision approved in accordance with § 51.123(ee)(2) of this chapter, for a con-

trol period for CAIR NO<sub>x</sub> Ozone Season sources in the State or for other entities specified by the permitting authority will not exceed the State's State trading budget for the year of the control period.

**APPENDIX A TO SUBPART EEEEE OF PART 97—STATES WITH APPROVED STATE IMPLEMENTATION PLAN REVISIONS CONCERNING ALLOCATIONS**

The following States have State Implementation Plan revisions under § 51.123(ee)(2) of this chapter approved by the Administrator and providing for allocation of CAIR NO<sub>x</sub> Ozone Season allowances by the permitting authority under § 97.343(a):

Indiana  
Louisiana  
Michigan  
New Jersey  
North Carolina  
Ohio  
South Carolina  
Tennessee  
West Virginia (for control periods 2009–2014)  
Wisconsin

[65 FR 2727, Jan. 18, 2000, as amended at 72 FR 46394, Aug. 20, 2007; 72 FR 52293, Sept. 13, 2007; 72 FR 55068, Sept. 28, 2007; 72 FR 55659, 55672, Oct. 1, 2007; 72 FR 56920, Oct. 5, 2007; 72 FR 57215, Oct. 9, 2007; 72 FR 58546, Oct. 16, 2007; 72 FR 59487, Oct. 22, 2007; 72 FR 71579, Dec. 18, 2007; 72 FR 72263, Dec. 20, 2007; 73 FR 6041, Feb. 1, 2008]

**Subpart FFFF—CAIR NO<sub>x</sub> Ozone Season Allowance Tracking System**

**§ 97.350 [Reserved]**

**§ 97.351 Establishment of accounts.**

(a) *Compliance accounts.* Except as provided in § 97.384(e), upon receipt of a complete certificate of representation under § 97.313, the Administrator will establish a compliance account for the CAIR NO<sub>x</sub> Ozone Season source for which the certificate of representation was submitted, unless the source already has a compliance account.

(b) *General accounts*—(1) *Application for general account.* (i) Any person may apply to open a general account for the purpose of holding and transferring CAIR NO<sub>x</sub> Ozone Season allowances. An application for a general account may designate one and only one CAIR authorized account representative and